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SENATE BILL 542

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO GAMING; AUTHORIZING A NEW GENERAL BUSINESS CATEGORY OF GAMING OPERATOR LICENSE TO BE ISSUED IF THE GOVERNOR CONCURS WITH THE DEPARTMENT OF INTERIOR THAT LAND NEWLY ACQUIRED BY AN INDIAN NATION, TRIBE OR PUEBLO FOR PURPOSES OF GAMING SHOULD BE TAKEN INTO TRUST; AUTHORIZING ADDITIONAL GAMES TO BE PLAYED ON PREMISES OF GAMING OPERATOR LICENSEES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2E-26 NMSA 1978 (being Laws 1997, Chapter 190, Section 28) is amended to read:

"60-2E-26. GAMING OPERATOR LICENSEES--GENERAL PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

A. An applicant for licensure as a gaming operator shall submit with the application a plan for assisting in the

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1 prevention, education and treatment of compulsive gambling.  
2 The plan shall include regular educational training sessions  
3 for employees. Plan approval is a condition of issuance of the  
4 license.

5 B. An applicant for licensure as a gaming operator  
6 shall submit with the application a proposed business plan.

7 The plan shall include at least:

8 (1) a floor plan of the area to be used for  
9 gaming machine operations;

10 (2) an advertising and marketing plan;

11 (3) the proposed placement and number of  
12 gaming machines;

13 (4) a financial control plan;

14 (5) a security plan;

15 (6) a staffing plan for gaming machine  
16 operations; and

17 (7) details of any proposed progressive  
18 systems.

19 C. A gaming operator licensee shall be granted a  
20 license to operate a specific number of machines at a gaming  
21 establishment identified in the license application and shall  
22 be granted a license for each gaming machine or game.

23 D. A gaming operator licensee who desires to change  
24 the number of machines in operation at a gaming establishment  
25 shall apply to the board for an amendment to his license

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1 authorizing a change in the number of machines.

2 E. Gaming machines may be available for play only  
3 in an area restricted to persons twenty-one years of age or  
4 older.

5 F. A gaming operator licensee shall erect a  
6 permanent physical barrier to allow for multiple uses of the  
7 premises by persons of all ages. For purposes of this  
8 subsection, "permanent physical barrier" means a floor-to-  
9 ceiling wall separating the general areas from the restricted  
10 areas. The entrance to the area where gaming [~~machines are~~  
11 ~~located~~] is conducted shall display a sign that the premises  
12 are restricted to persons twenty-one years of age or older.  
13 Persons under the age of twenty-one shall not enter the area  
14 where gaming [~~machines are located~~] is conducted.

15 G. A gaming operator licensee shall not have  
16 automated teller machines in the area restricted pursuant to  
17 Subsection F of this section.

18 H. A gaming operator licensee shall not provide,  
19 allow, contract or arrange to provide alcohol or food for no  
20 charge or at reduced prices as an incentive or enticement for  
21 patrons to game.

22 I. Only a racetrack licensed by the state racing  
23 commission or a nonprofit organization may apply for or be  
24 issued a gaming operator's license. No other persons are  
25 qualified to apply for or be issued a gaming operator's license

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1 pursuant to the Gaming Control Act; except, if the governor  
2 concurs with the United States secretary of the interior's  
3 determination that land acquired after October 17, 1988 in New  
4 Mexico by an Indian nation, tribe or pueblo pursuant to 25 USCA  
5 Section 2719(b)(1)(A) shall be taken into trust for the benefit  
6 of that Indian nation, tribe or pueblo and gaming is planned to  
7 be conducted on that land, the board shall:

8 (1) within six months following the date on  
9 which the land is taken into trust for the benefit of the  
10 Indian nation, tribe or pueblo, develop rules that allow gaming  
11 operators that are general businesses to be licensed;

12 (2) within nine months following the date that  
13 the land is taken into trust for the benefit of the Indian  
14 nation, tribe or pueblo, begin accepting applications from the  
15 general gaming operator license applicants; and

16 (3) within twelve months following the date  
17 that the land is taken into trust for the benefit of the Indian  
18 nation, tribe or pueblo, develop rules that would allow a  
19 gaming operator licensee to offer for play any game not  
20 unlawful pursuant to federal law."

21 Section 2. A new section of the Gaming Control Act,  
22 Section 60-2E-26.1 NMSA 1978, is enacted to read:

23 "60-2E-26.1. [NEW MATERIAL] GAMING OPERATOR LICENSEES--  
24 GENERAL BUSINESS--SPECIAL CONDITIONS--DAYS AND HOURS OF  
25 OPERATION.--

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1           A. The board may issue a gaming operator license  
2 for a general business to:

3                   (1) a liquor licensee licensed pursuant to the  
4 Liquor Control Act to make retail sales of alcoholic beverages  
5 by the drink or in unbroken packages;

6                   (2) an enterprise that provides lodging to the  
7 public on a short-term basis to accommodate travelers and  
8 tourists;

9                   (3) a restaurant that prepares and serves food  
10 on the premises of the restaurant for consumption on the  
11 premises; or

12                   (4) any other category of business that the  
13 board deems appropriate, except that a racetrack or a nonprofit  
14 organization may not be issued a gaming operator license for a  
15 general business.

16           B. A general business gaming operator licensee that  
17 is a liquor licensee shall only conduct gaming on the premises  
18 that are identified in the liquor licensee's application for a  
19 liquor license.

20           C. General business gaming operator licensees that  
21 are not liquor licensees shall conduct gaming on premises  
22 identified in their application to the board. The gaming shall  
23 be conducted on the same premises as the lodging enterprise,  
24 restaurant or other business that qualified the person to apply  
25 for a license as a gaming operator.

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1           D. A general business gaming operator licensee may  
2 have up to twenty-five licensed gaming machines, but the number  
3 of gaming machines to be located on the licensee's premises  
4 shall be specified in the general gaming operator's license.  
5 Other games as allowed by rule of the board may be conducted on  
6 the premises of a gaming operator that is a general business.

7           E. Gaming may be conducted on the premises of a  
8 general business gaming operator licensee from noon until  
9 midnight on Sunday through Saturday.

10           F. Alcoholic beverages shall not be sold, served,  
11 delivered or consumed in an area restricted pursuant to Section  
12 60-2E-26 NMSA 1978 in which gaming is conducted."

13           Section 3. Section 60-2E-27 NMSA 1978 (being Laws 1997,  
14 Chapter 190, Section 29, as amended) is amended to read:

15           "60-2E-27. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS  
16 FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF  
17 OPERATIONS.--

18           A. A racetrack licensed by the state racing  
19 commission pursuant to the Horse Racing Act to conduct live  
20 horse races or simulcast races may be issued a gaming  
21 operator's license to operate gaming machines on its premises  
22 where live racing is conducted.

23           B. A racetrack's gaming operator's license shall  
24 automatically become void if:

25           (1) the racetrack no longer holds an active

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1 license to conduct pari-mutuel wagering; or

2 (2) the racetrack fails to maintain a minimum  
3 of three live race days a week with at least nine live races on  
4 each race day during its licensed race meet in the 1997  
5 calendar year and in the 1998 and subsequent calendar years,  
6 four live race days a week with at least nine live races on  
7 each race day during its licensed race meet.

8 C. A gaming operator licensee that is a racetrack  
9 may have up to six hundred licensed gaming machines, but the  
10 number of gaming machines to be located on the licensee's  
11 premises shall be specified in the gaming operator's license.  
12 Pursuant to rules of the board, a gaming operator licensee that  
13 is a racetrack may offer other games for play.

14 D. By execution of an allocation agreement, signed  
15 by both the allocating racetrack and the racetrack to whom the  
16 allocation is made, a gaming operator licensee that is a  
17 racetrack may allocate any number of its authorized gaming  
18 machines to another gaming operator licensee that is a  
19 racetrack. To be valid, the allocation agreement must bear the  
20 written approval of the board and the state racing commission,  
21 and this approval shall make specific reference to the meeting  
22 at which the action of approval was taken and the number of  
23 votes cast both for and against the approval. By allocating a  
24 number of its authorized machines to another racetrack, the  
25 allocating racetrack automatically surrenders all rights to

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1 operate the number of machines allocated. No racetrack shall  
2 operate or be authorized to operate more than seven hundred  
3 fifty gaming machines.

4 E. Gaming machines on a racetrack gaming operator  
5 licensee's premises may be played only on days when the  
6 racetrack is either conducting live horse races or simulcasting  
7 horse race meets. A gaming operator licensee that is a  
8 racetrack shall be permitted to conduct such games on only the  
9 aforementioned days for a daily period not to exceed twelve  
10 hours at the discretion of such licensee.

11 F. Alcoholic beverages shall not be sold, served,  
12 delivered or consumed in the area restricted pursuant to  
13 Subsection F of Section 60-2E-26 NMSA 1978."

14 Section 4. Section 60-2E-28 NMSA 1978 (being Laws 1997,  
15 Chapter 190, Section 30, as amended) is amended to read:

16 "60-2E-28. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS  
17 FOR NONPROFIT ORGANIZATIONS--NUMBER OF GAMING MACHINES--DAYS  
18 AND HOURS OF OPERATIONS.--

19 A. A nonprofit organization may be issued a gaming  
20 operator's license to operate licensed gaming machines on its  
21 premises to be played only by active and auxiliary members.

22 B. No more than fifteen gaming machines may be  
23 offered for play on the premises of a nonprofit organization  
24 gaming operator licensee. Pursuant to rules of the board, a  
25 nonprofit organization gaming operator licensee may offer other

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1 games for play.

2 C. ~~[No]~~ A gaming machine on the premises of a  
3 nonprofit organization gaming operator licensee may not award a  
4 prize that exceeds four thousand dollars (\$4,000).

5 D. Gaming machines may be played on the premises of  
6 a nonprofit organization gaming operator licensee from 12:00  
7 noon until 12:00 midnight every day."

8 Section 5. Section 60-2E-47 NMSA 1978 (being Laws 1997,  
9 Chapter 190, Section 49, as amended) is amended to read:

10 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

11 A. An excise tax is imposed on the privilege of  
12 engaging in gaming activities in the state. This tax shall be  
13 known as the "gaming tax".

14 B. The gaming tax is an amount equal to ten percent  
15 of the gross receipts of manufacturer licensees from the sale,  
16 lease or other transfer of gaming devices in or into the state,  
17 except receipts of a manufacturer from the sale, lease or other  
18 transfer to a licensed distributor for subsequent sale or lease  
19 may be excluded from gross receipts; ten percent of the gross  
20 receipts of distributor licensees from the sale, lease or other  
21 transfer of gaming devices in or into the state; ten percent of  
22 the net take of a gaming operator licensee that is a nonprofit  
23 organization; and twenty-five percent of the net take of every  
24 other gaming operator licensee. For the purposes of this  
25 section, "gross receipts" means the total amount of money or

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1 the value of other consideration received from selling, leasing  
2 or otherwise transferring gaming devices.

3 C. The gaming tax imposed on a licensee is in lieu  
4 of all state and local gross receipts taxes on that portion of  
5 the licensee's gross receipts attributable to gaming  
6 activities.

7 D. The gaming tax is to be paid on or before the  
8 fifteenth day of the month following the month in which the  
9 taxable event occurs. The gaming tax shall be administered and  
10 collected by the taxation and revenue department in cooperation  
11 with the board. The provisions of the Tax Administration Act  
12 apply to the collection and administration of the tax.

13 E. In addition to the gaming tax, a gaming operator  
14 licensee that is a racetrack shall pay twenty percent of its  
15 net take to purses to be distributed in accordance with rules  
16 adopted by the state racing commission. An amount not to  
17 exceed twenty percent of the interest earned on the balance of  
18 any fund consisting of money for purses distributed by  
19 racetrack gaming operator licensees pursuant to this subsection  
20 may be expended for the costs of administering the  
21 distributions. [~~A racetrack gaming operator licensee shall  
22 spend no less than one-fourth of one percent of the net take of  
23 its gaming machines to fund or support programs for the  
24 treatment and assistance of compulsive gamblers.]~~

25 F. A nonprofit gaming operator licensee shall

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1 distribute at least sixty percent of the balance of its net  
2 take, after payment of the gaming tax and any income taxes,  
3 for charitable or educational purposes.

4 G. A gaming operator licensee that is a racetrack  
5 or a general business shall expend no less than one-fourth  
6 percent of its net take to fund or support programs for the  
7 treatment and assistance of compulsive gamblers."

8 Section 6. EMERGENCY.--It is necessary for the public  
9 peace, health and safety that this act take effect immediately.